

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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THE BASU GROUP INC., )  
Plaintiff, )  
v. ) Civil Action No. 16-cv-00461-PGG  
SEVENTH AVENUE, INC., )  
Defendant. )

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**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant Seventh Avenue, Inc. (hereinafter "Seventh Avenue"), through its counsel, respectfully Moves this Honorable Court enter Summary Judgment of Noninfringement and Unclean Hands in favor of Seventh Avenue and against Plaintiff The Basu Group, Inc. (hereinafter "Basu"), pursuant to Federal Rule of Civil Procedure 56.

Summary Judgment should be entered because:

- (1) The Accused Work was independently created and is therefore not infringing.
- (2) The Accused Work and original aspects of the asserted work lack sufficient similarity from to infer infringement.
- (3) The registration and deposit submitted have serious shortcomings that rebut presumptions that would flow from a legitimate registration.
- (4) The preexisting, published, materials that were not disclosed include all the elements identified by the Court as points of similarity between the Accused Work and Basu's Peacock Feather #1, which has effects of:
  - a. because Basu is asserting those features, the failure to disclose preexisting works that had the features is material to the scope of Basu's registration;

- b. because it is the preexisting, published features, not created by Basu, that are in common exclusion of their content under the “more discerning observer” test means that the Accused Work has negligible similarity to the original portions of Basu’s Peacock Feather #1;
- c. under alternative approaches of analysis, such as merger of idea and expression and derivation from items in nature, there is also non-infringing similarity – the only similarity being in the idea of portraying stylized peacock feathers.

(5) The Court should deny enforcement for failure to disclose preexisting published works and making an unauthorized derivative work based its equitable authority applying the doctrine of unclean hands.

Respectfully submitted,

Ladas & Parry LLP

Attorneys for Defendant, Seventh Avenue, Inc.

Date: March 31, 2017

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CERTIFICATE OF SERVICE

I hereby certify that I have this 31<sup>st</sup> day of March, 2017, served a copy of the foregoing by mailing, postage/shipping prepaid, in an envelope addressed to:

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Dated: March 31, 2017

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